

## REMARKS

Applicant is uncertain, based upon a review of the Advisory Action dated May 12, 2005, whether the after-final amendments Applicant previously made (on April 25, 2005) were entered. Accordingly, both for purposes of clarity and to make sure that the amendments are entered, applicant has assumed that the amendments were not entered and has again marked the amendments to the claims. In that regard, pending claims 1-29 have been amended in the identical manner to the amendments previously made after-final and applicant requests entry of those amendments. Additionally, by this Preliminary Amendment, Applicant further adds new claims 30-53.

Applicant believes that claims 1-29 are allowable for at least the reasons stated in Applicant's Amendment After-Final and Request for Reconsideration dated April 25, 2005. Additionally, in the Advisory Action, the examiner states:

The applicant stated that Walsh et al. reference does not teach or suggest "downloading a music recording to a wireless communications device for storage in a memory of the device". The examiner directs the applicant to Column 3, lines 43-48 and Column 17, lines 15-18 [of Walsh et al.] where the preceding limitations are taught. The memory embedded in microprocessor 122 is for storing programs and data. Data could be anything including text, voice, sound, music . . . .

Applicant respectfully requests that the examiner re-read the cited portions of Walsh et al. There is nothing in Walsh et al. that teaches or suggests that the "data" stored in memory is music. Indeed, to the contrary, the entire operation of the Walsh et al. device is directing a "host server to supply information on a real-time, interactive basis". Operation of the Walsh et al. device, as taught in the reference, does not store music in memory. The examiner's blanket statement that "[d]ata could be anything including text, voice, sound, music . . . ." is not supported by the reference. Indeed, the Walsh et al reference expressly teaches away from storing music in memory.

In the Advisory Action, the examiner further states:

Further, there's nothing novel about storing a music recording for playback (see Kennedy III et al., U.S. Patent No. 6,405,033, column 2, lines 59-61 for example.)

However, contrary to this statement, Kennedy III et al. do not teach nor suggest downloading and storing a music recording. Kennedy III et al. teach or suggest storing audio information such as "different segments of a set of instructions downloaded by a service center." Accordingly, Kennedy III et al. is not a proper basis upon which a Section 102 rejection concerning lack of

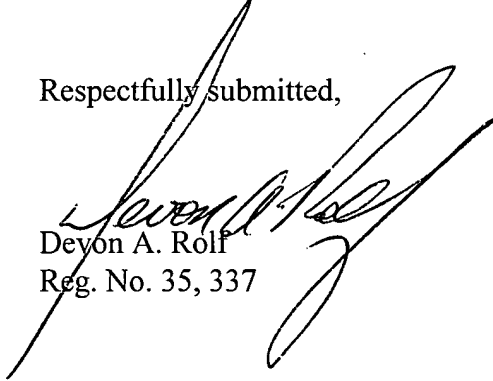
novelty of applicant's present claims can be sustained.

Additionally, the examiner's comments in the Advisory Action appear to address only claim 1. In that regard, other independent claims in this application do not include a limitation of "downloading a music recording to a wireless communications device for storage in a memory of the device." Accordingly, applicant respectfully requests that the examiner reconsider the outstanding rejections with respect to claims 1-29.

Applicant has added new claim 30. Claim 30 depends from claim 1 and includes the limitation that said at least on music recording stored in said memory "can be played without the need to establish and maintain a communications link with said remote storage facility." This claim further distinguishes the present invention from the teachings of Walsh et al, noting the examiner's comment that this particular limitation (argued previously by the applicant for the purpose of illustrating a difference between Walsh et al.'s teachings and applicant's invention) "is not found in claim 1." Applicant believes that claim 30 is allowable.

Applicant has added new claims 31-53. Applicant requests entry and allowance of these claims. In view of the foregoing amendments and remarks, it is believed that this application is in condition for allowance. Such action is respectfully requested. If the examiner believes that a telephone call would further prosecution, the Applicant welcomes a telephone call. The examiner may reach applicant at 913.485.6545

Respectfully submitted,

  
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